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COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

Note by the United Nations High Commissioner for Human Rights

The High Commissioner for Human Rights has the honour to transmit to the members of the Commission on Human Rights the report of the meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme which took place in Geneva from 20 to 23 May 1997.

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Annex

REPORT OF THE MEETING OF SPECIAL RAPPORTEURS/REPRESENTATIVES, EXPERTS AND CHAIRPERSONS OF WORKING GROUPS OF THE SPECIAL PROCEDURES OF THE COMMISSION ON HUMAN RIGHTS AND OF THE ADVISORY SERVICES PROGRAMME

Geneva, 20-23 May 1997

Rapporteur: Ms. Fatma-Zhora Ksentini

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Introduction

1. The meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and the advisory services programme of the Commission on Human Rights was organized as a follow-up to the World Conference on Human Rights and to the previous three meetings which were held in 1994, 1995 and 1996. The Vienna Declaration and Programme of Action, in its section entitled "Implementation and monitoring methods", underlined "the importance of preserving and strengthening the system of special procedures" and specified that "the procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings" (Part II, para. 95).

2. Prior to the adoption of the Vienna Declaration and Programme of Action, an informal meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures was held at Geneva during the preparatory process leading to the World Conference on Human Rights. During the World Conference itself, a second informal meeting was held at Vienna, to which the special rapporteurs/representatives, experts and chairperson of working groups of the special procedures contributed a joint declaration (A/CONF.157/9).

3. The first meeting of special rapporteurs/representatives, experts and chairperson of working groups of the Commission on Human Rights following the World Conference on Human Rights was organized at Geneva from 30 May to 1 June 1994. Insofar as independent experts of the advisory services programme were viewed to be faced with very similar situations to those of the special procedures and that at least two of the former were charged explicitly with fact-finding tasks, these experts also participated in the meeting. The participants adopted a report containing a summary of their discussions and a list of their recommendations (E/CN.4/1995/5, annex).

4. The second meeting was organized at Geneva from 29 to 31 May 1995. At that meeting, the two independent experts appointed under the procedure established in accordance with Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 were also invited to participate as their mandates were essentially the same as those of the independent experts of the special procedures, except that the former report confidentially to the Commission on Human Rights. The participants adopted a report containing a summary of their discussions and a list of their recommendations (E/CN.4/1996/50, annex).

5. The third meeting was organized at Geneva from 28 to 30 May 1996. At that meeting, the participants agreed that the officers of the meeting should remain in their functions until the election of the officers of the fourth meeting, and should be entrusted with monitoring the follow-up to the adopted recommendations, including their transmission to the High Commissioner for Human Rights. The participants adopted a report containing a summary of their discussions and a list of their recommendations (E/CN.4/1997/3).

6. The present meeting had before it annotations to the provisional agenda prepared by the Secretariat. It also had before it, prepared by the Secretariat or by participants, a draft manual for special

rapporteurs/representatives, experts and chairmen of working groups of the Commission on Human Rights; a background paper on the relationship of field presences of the Office of the High Commissioner/Centre for Human Rights with the mandates and activities of special rapporteurs of the Commission; a note concerning the role of the High Commissioner for Human Rights in the implementation of the recommendations made by the special procedure mechanisms of the Commission; and a note on the Malaysian court case against the Special Rapporteur on the independence of judges and lawyers and its implications for the special procedures system.

7. The list of mandates of the special procedures mechanism of the Commission and of the advisory services programme of the High Commissioner/ Centre for Human Rights is provided in appendix I; the list of participants at the fourth meeting is given in appendix II.

8. In the absence of a specific budgetary allocation providing for their attendance at the meeting, the independent experts were invited to combine their attendance with consultations at Geneva provided for in their respective mandates.

9. Following the example of the second and third meetings, the Chairman of the fifty-third session of the Commission on Human Rights, Ambassador M. Somol, was invited to participate in the deliberations on agenda item 5 (Cooperation with the Commission on Human Rights). Pursuant to a recommendation made by the High Commissioner for Human Rights at the second meeting, the Chairperson of the seventh meeting of persons chairing the human rights treaty bodies, Mrs. I. Corti, addressed the meeting. Further, pursuant to a request made by the Chairperson of the Committee on Economic, Social and Cultural Rights, Mrs. V. Bonoan-Dandan, the Rapporteur of that Committee also addressed the participants on how economic, social and cultural rights could be integrated into their work. Mr. M. O'Flaherty from UNAIDS also gave a short briefing on how HIV/AIDS as a human right issue could be integrated into the work of the special procedures mechanisms.

I. ORGANIZATION OF WORK

A. Opening of the meeting

10. The meeting was opened by Mr. Bacre Waly Ndiaye, the Chairperson of the third meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the Commission on Human Rights and of the advisory services programme. He presented a report on the activities he had undertaken during the past year in his capacity as Chairman and announced the names of the special rapporteurs/representatives, experts and chairpersons of working groups of the Commission on Human Rights and of the advisory services programme who had stepped down as well as those who had replaced them (the list is available in appendix III). The participants congratulated Mr. Ndiaye and Ms. M. Pinto, Rapporteur of the third meeting, and decided that Mr. Ndiaye's report should be annexed to the present report in order to follow up on the recommendations and issues contained therein (appendix IV).

B. Election of officers

11. Mr. Paulo Sergio Pinheiro was elected Chairperson and Ms. Fatma-Zohra Ksentini was elected Rapporteur of the fourth meeting.

C. Adoption of the agenda

12. The meeting adopted the following agenda:

1. Opening of the meeting by Mr. Bacre W. Ndiaye, Chairman of the third meeting of special rapporteurs/representatives, experts and working groups of the Commission on Human Rights

2. Election of the Chairperson and Rapporteur

3. Adoption of the provisional agenda and organization of work

4. Statement by Mr. Ralph Zacklin, officer-in-charge, High Commissioner/Centre for Human Rights

5. Cooperation with the Commission on Human Rights

6. Assessment of progress made in achieving the mandated objectives: independence, impartiality and coordination of the special procedures system

7. Cooperation with the High Commissioner for Human Rights:

   (a) Coordination with the advisory services and technical cooperation programme;

   (b) Coordination between the special procedures system and the United Nations field offices;

   (c) Procedures for ensuring implementation of and follow-up to participants' recommendations;

   (d) Restructuring of the Centre for Human Rights

8. Coordination between the special procedures system and the treaty bodies:

   (a) Exchange of views with the Chair of the meeting of persons chairing the treaty bodies;

   (b) Exchange of views with a member of the Committee on Economic, Social and Cultural Rights

9. Integrating HIV/AIDS

10. Administrative questions including budgetary issues

11. Cooperation with the Secretary-General, including coordination between the special procedures system and the Security Council and General Assembly, through the Secretary-General

12. Consideration of the draft manual for special rapporteurs/representatives, experts and working groups of the Commission on Human Rights

13. Other matters.

D. Statement by the officer-in-charge, High Commissioner/Centre for Human Rights

13. The officer-in-charge of the High Commissioner/Centre for Human Rights made a statement. He referred to the recommendations made by the participants at their previous meeting. With regard to the concerns expressed about the restructuring process, Mr. Zacklin reassured the participants that at this crucial moment, in which serious transformations were taking place within the High Commissioner/Centre for Human Rights, every effort was being made to ensure that each of the participants was able to carry out his/her mandate in the most professional and competent manner. He described various initiatives that the former High Commissioner had undertaken during the previous year to help enhance coordination and cooperation between the participants and his office and between participants and other human rights mechanisms such as the treaty bodies, as well as coordination between participants and other parts of the Secretariat and other United Nations bodies.

14. The meeting expressed its great appreciation to the officer-in-charge of the High Commissioner/Centre for Human Rights for the information that he had provided.

II. COOPERATION WITH THE COMMISSION ON HUMAN RIGHTS

15. The Chairman of the forty-third session of the Commission on Human Rights, His Excellency Mr. Miroslav Somol, addressed the meeting on the first day, providing his views on the fifty-third session of the Commission. He also addressed the efforts made to enhance cooperation between the Commission and the participants.

16. In his statement he highlighted several resolutions adopted at the session, particularly those concerning thematic and country-specific mechanisms. He noted that resolutions had been adopted calling upon him to appoint a special rapporteur on the human rights situation in Nigeria and a special representative on the situation of human rights in Rwanda. In addition, he was to appoint an independent expert to study the effects of structural adjustment policies on economic, social and cultural rights. Mr. Somol said that he hoped to make the appointments by the first week of June, on the basis of qualifications and experience in the relevant field.

17. He also delineated several of the negative aspects which had influenced the work of the Commission. Those aspects included politicization of the work, the low level of trust among Member States, the problem of selectivity

and double standards applied against certain target countries and, lastly, the lack of transparency during the negotiation process on individual resolutions.

18. A positive aspect of the Commission was the consideration of some subjects on a biannual basis which had facilitated and speeded up the adoption of resolutions and decisions. In that regard, the Chairman informed the participants about further efforts being undertaken by an informal group of representatives to improve the Commission's working methods.

19. An issue of particular concern to him was the ever-increasing number of mandates. Consequently, he proposed that an evaluation of all the mandates and their relationship to each other be undertaken so as to avoid overlap in the work of working groups and special rapporteurs. In regard to the working relations between the special rapporteurs and the Commission, he stressed that the deadlines for the submission of reports and the norms for the length of the reports had to be respected. In reference to the oral presentation of reports by special rapporteurs, the Bureau of the fifty-third session recommended that the special rapporteurs not introduce their reports on voting days, but rather at the beginning of the consideration of the relevant item. The introduction of the report would be followed immediately by a 30-minute "question and answer" session in addition to extra time for concluding remarks, if so desired.

20. Participants noted that it was important to establish a dialogue with the Member States, and emphasis must therefore be placed on promoting interaction. To that end, a discussion period following the introduction of the report would contribute to the effectiveness of the work.

21. During the debate that followed, several of the participants voiced their concerns about the negative aspects mentioned by the Chairman. In particular, they expressed their concern over the growing mistrust that existed among some Member States vis-à-vis the special rapporteurs. The Member States had to be reassured that the special rapporteurs were guided by and adhered to the basic principles that were reflected in the various resolutions adopted by the Commission. In this regard, one participant noted that the special rapporteurs must enjoy freedom in carrying out the mandates entrusted to them; any attempt to curtail this freedom of action was antithetical to the very ideals under which the special rapporteurs had been established.

22. The participants agreed that the meeting should reiterate the basic principles which guided their work. One participant informed the meeting about the procedure used by the members of the treaty bodies who, upon assuming their functions, made a solemn declaration that he or she would perform his or her functions impartially and conscientiously; it might be useful for the special rapporteurs to make a similar declaration.

23. A related issue addressed by the meeting was the adoption of decision 1997/125 by the Commission at its fifty-third session concerning the report of Mr. Maurice Glèlè-Ahanhanzo, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in which it decided, without a vote, "to express its indignation and protest at

the content of such an offensive reference to Islam and the Holy Qur'an; affirmed that the offensive reference should have been excluded from the report; and requested the Chairman to ask the Special Rapporteur to take corrective action in response to the present decision". There was consensus among the participants that it was inappropriate for the Commission to request a special rapporteur to amend his report. It was clearly stressed that the special rapporteurs were responsible for the contents of their reports and that the Commission could criticize the substance of a report. One participant agreed that the passage in question was offensive to Islamic States and noted that there was a general principle that allegations should not contain offensive remarks. Nevertheless, special rapporteurs should not be requested to amend their reports merely because certain passages were deemed offensive by a particular Member State or group of Member States. Several participants noted that it was in fact common practice for special rapporteurs to quote communications transmitted by Member States, and indeed, it was inappropriate for a special rapporteur to censor a communication that had been transmitted by a Member State. One participant also noted that the decision should not have been taken in the absence of the special rapporteur. At a minimum, he should have had an opportunity to explain the context in which the passage was included in his report.

III. ASSESSMENT OF PROGRESS MADE IN ACHIEVING THE MANDATED OBJECTIVES: INDEPENDENCE, IMPARTIALITY, AND COORDINATION OF THE SPECIAL PROCEDURES SYSTEM

24. The meeting had before it a background paper concerning the ongoing defamation suit filed in a Malaysian court against the Special Rapporteur on the independence of judges and lawyers. The paper summarized the facts of the case, set forth the relevant provisions of the 1947 Convention on Privileges and Immunities of the United Nations, in particular article 22, and provided a brief analysis of the Advisory Opinion of the International Court of Justice in the Mazilu case. The paper noted that the United Nations Legal Counsel had given notice to the Malaysian Government that if the action against the Special Rapporteur was not dismissed by the court then the United Nations would consider that Malaysia was in dispute with the United Nations. The paper concluded with recommendations that might be considered by the meeting, most importantly, that the United Nations might seek an Advisory Opinion from the Court on which authority was competent to decide on the functional immunity of officials and experts on mission under the terms of the Convention.

25. The participants unanimously agreed that the suit against the Special Rapporteur was a threat to the entire special procedures system. Several participants stated that the meeting should be more pro-active. Many expressed the view that a dispute already existed, noting that the Special Rapporteur was not benefiting from immunity as he was in fact the subject of legal proceedings. The case should be referred by the Secretary-General to the Economic and Social Council, requesting that it seek an Advisory Opinion from the International Court of Justice on the question. The suit was an unacceptable interference in the mission of the Special Rapporteur and a threat to his independence. The officer-in-charge of the office of the

High Commissioner/Centre for Human Rights assured the participants of the seriousness with which the Secretariat viewed the case because it involved an important principle for the Organization.

26. The participants agreed that the meeting must take practical steps to support their colleague. One participant suggested that the Chairman should be given the authority to react on 30 June, the date on which the court was to render its decision; that the meeting should adopt a resolution reaffirming the immunity of the Special Rapporteur from legal processes of every kind and reaffirming the position that the suit was a threat to the entire system; and that the meeting should request the Secretary-General to use all necessary means to raise the issue before the Economic and Social Council and to request the Council to refer the matter to the International Court of Justice for an Advisory Opinion.

27. Concerning the question of coordination of the special procedures system, it was recalled that the third meeting had recommended the appointment of a focal point within the Centre for Human Rights who would act as a clearing-house regarding the in situ visits of special rapporteurs and the High Commissioner, receiving information concerning all informal contacts that the special rapporteurs/representatives, experts and chairpersons of working groups and the High Commissioner for Human Rights had with a given Government about a possible visit. Pursuant to this recommendation, a mission chart was prepared by the Secretariat setting forth information on the missions that had been scheduled. Several participants expressed the view that the chart was insufficient because it did not give clear guidance on the missions scheduled, nor did it provide information on missions being contemplated but for which no agreement had been reached with the concerned Member State. It was also emphasized that the chart must include the travel plans of the High Commissioner. In this regard, another participant noted that the idea of a focal point was not merely to provide information on the travel plans of the High Commissioner, but to stimulate a dialogue between the special rapporteurs and the High Commissioner so that the special rapporteurs were able to contribute to the preparation of missions, thereby helping to ensure that they were useful and productive.

28. The participants also discussed the need for improved coordination among themselves to ensure that separate appeals were not sent out by two or more special procedure mechanisms concerning the same case. One participant noted that a lack of coordination with the Activities and Programmes Branch reflected upon the credibility of the special rapporteurs. It was emphasized that there must be an effective exchange of information within the Branch. To that end, the participants urged that the Activities and Programmes Branch develop techniques for ensuring that there was effective coordination among its various special procedures and advisory services mechanisms, and between them and the field operations, in particular by facilitating a flow of information on their activities; by the transmission of information from one mandate to other relevant mandates; and by promoting joint activities (e.g. urgent actions, missions, etc.) so as to avoid duplication and overlapping.

29. The meeting also reiterated the position taken at the second meeting that thematic rapporteurs should not seek to visit a country for which there existed a country-specific rapporteur without first consulting the latter. Similarly, it was agreed that there should be consultations with the country-specific rapporteur before a thematic rapporteur transmitted an allegation or urgent action to that country. It was emphasized by one participant that there was a real need for consultation so that different views were not presented to the Commission on Human Rights.

IV. COOPERATION WITH THE HIGH COMMISSIONER FOR HUMAN RIGHTS

30. The third meeting had recommended that a study be carried out on the conditions under which the High Commissioner for Human Rights could intervene with a given Government to facilitate the follow-up of recommendations by the holders of human rights mandates. The participants expressed their disappointment and frustration that the background paper concerning this study that was presented to the meeting was insufficient. There was consensus among the participants that the recommendations of the present meeting should reiterate the importance they attached to this study and that the Chairman should emphasize this to the new High Commissioner at the earliest opportunity. Another participant proposed that the meeting should recommend to the High Commissioner that a first draft of the requested study be transmitted to all special rapporteurs, representatives and working groups before 30 September 1997 to enable them to formulate comments and suggestions so that a final text could be presented for approval at the next meeting.

31. With regard to the restructuring of the Centre for Human Rights, concern was expressed that the limited servicing available to the special rapporteurs would become even more limited under the new structure. Every measure should be taken to avoid this. The timing of the implementation of the new structure should be such that it did not interfere with the preparation of reports. The officer-in-charge of the High Commissioner/Centre for Human Rights assured the participants that every effort would be made to ensure that the special rapporteurs were not in a worse position, although he acknowledged that resources unfortunately remained limited.

32. One participant expressed the concern that the new structure integrated technical cooperation into monitoring and special procedures. He noted that all the members of the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights had addressed a letter to the Secretary-General expressing the view that technical cooperation should be managed separately from special procedures and monitoring in view of the different nature of the two sets of activities which required different expertise, procedures and methodologies. At their request, a copy of the letter was made available to all participants.

33. In response to these concerns, the officer-in-charge stated that the fact that technical cooperation and special procedures were under the same Branch in the new structure did not necessarily imply that the two activities would be merged. The two programmes would be managed within the same Branch in accordance with their distinct rules and criteria. The advisory services and technical cooperation programme would continue to operate in full compliance with the methods and procedures governing the programme.

V. COORDINATION BETWEEN THE SPECIAL PROCEDURES SYSTEM AND THE TREATY BODIES

A. Exchange of views with the Chair of the meeting of persons chairing the treaty bodies

34. In an effort to enhance coordination between the special procedures system and the treaty bodies, the Chairperson of the seventh meeting of persons chairing the treaty bodies, Ms. Corti, was invited to address the meeting.

35. In her statement, the Chairperson raised the problems associated with achieving universal recognition and ratification of the major international human rights treaties. She expressed dissatisfaction with the continuing lack of cooperation between special rapporteurs and the treaty bodies which she attributed partially to the current problems associated with non-ratification of human rights treaties. She expressed concern for the lack of support given to special rapporteurs and noted that it was a problem shared by the treaty bodies. The very system which appointed special rapporteurs did not sustain them. The special rapporteurs and the treaty bodies had to ask continuously for an improvement in their status to ensure that they were able to carry out effectively the mandates which had been entrusted to them.

36. Both the special rapporteurs and the members of the treaty bodies were advocates for human rights and their work was complementary. She emphasized the need to strive for a more organic cooperation between the treaty bodies and the special rapporteurs for faster implementation of the rights set forth in the various human rights treaties. Special rapporteurs were essential for monitoring and promoting compliance with international human rights treaties. Where treaty bodies observed violations of human rights which coincided with those issues which were central or related to the mandates of special rapporteurs, cooperation should be sought to achieve the optimum results. She requested that a copy of the report of the present meeting be transmitted to each of the treaty bodies.

37. In response, the special rapporteurs expressed their desire to strive for better cooperation between themselves and the treaty bodies to achieve global recognition of human rights. One special rapporteur pointed out that there was an evolution towards the recognition of the importance of economic, social and cultural rights as demonstrated by the appointment of several special rapporteurs dealing with those issues. Another special rapporteur expressed the belief that, in addition to better cooperation between special rapporteurs and treaty bodies, the current policy at United Nations Headquarters, which seemed to be that political and humanitarian interests superseded human rights, needed to be changed.

B. Exchange of views with a member of the Committee on Economic, Social and Cultural Rights

38. Pursuant to a request made by the Chairperson of the Committee on Economic, Social and Cultural Rights, the Rapporteur of that Committee, Ms. Bonoan-Dandan, addressed the meeting and discussed the need for greater integration of economic, social and cultural rights into the work of the special rapporteurs.

39. The Rapporteur noted that the field of human rights was an integrated whole. As such, civil and political rights and economic, social and cultural rights were indivisible and interdependent parts of a unitary whole. In 1950, the General Assembly, in resolution 421 E (V), stated that the enjoyment of civil and political freedoms and economic, social and cultural rights were interconnected and interdependent. Our lives were not compartmentalized into what was civil and political on the one hand and what was economic, social and cultural on the other; this wholeness therefore mirrored the realities of everyday life.

40. In truth, however, questions of human rights arose more frequently in connection with civil and political rights, while economic, social and cultural rights were ignored. This was, sadly, reflected within the United Nations human rights programme. For example, because the existing mandates of special rapporteurs and thematic mechanisms tended to put greater emphasis on civil and political freedoms, a regrettable imbalance had been created. To counter this imbalance, her Committee had proposed the appointment of a special rapporteur on economic, social and cultural questions.

41. However, since a significant number of mandates were described in inconclusive terms, an opportunity existed for special rapporteurs to assist in reaching a more balanced implementation of the two sets of rights by attaching a significant emphasis to economic, social and cultural rights. For example, in relation to traditional mandates such as arbitrary executions, torture and religious intolerance, the underlying reasons for certain practices often related to issues related to economic, social and cultural rights. Similarly, violations of civil and political rights could very well result in violation of economic, social and cultural rights. In such cases, it would be appropriate for the connection to be pointed out rather than ignored.

42. Accordingly, the Committee on Ecoromic, Social and Cultural Rights had adopted seven General Comments based on the various articles and provisions of the Covenant, for the benefit of all States parties, in order to assist and promote their further implementation of the Covenant. General Comment 3 elaborated on article 2, paragraph 1, of the Covenant which dealt with the nature of the States parties' obligations. Article 2, describing the general obligations undertaken by States parties to the Covenant, was of particular importance to a full understanding of the Covenant and must be viewed as having a dynamic relationship with all other provisions of the Covenant. General Comment 7 on forced evictions demonstrated the relationship between civil and political freedoms and economic, social and cultural rights as well as the opportunities that arose for special rapporteurs to draw on the relationships that existed. In particular, paragraph 5 stated that, owing to the interrelation and interdependency which existed among all human rights, forced evictions frequently violated other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions could also result in violations of civil and political rights such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home, and the right to the peaceful enjoyment of possessions.

43. She noted that the Committee had adequately demonstrated that it was possible to identify specific violations of economic, social and cultural rights despite the complexity introduced by the available-resource dimension referred to in article 2, paragraph 1, of the Covenant. Identifying one or two such issues and including a section on violations of economic, social and cultural rights in reports of special rapporteurs would be a significant step in the advancement and implementation of those rights. She concluded by reiterating the importance of developing a more effective, nuanced and constructive approach for promoting economic, social and cultural rights.

VI. INTEGRATING HIV/AIDS

44. UNAIDS had proposed to the Chairperson that it prepare for relevant special rapporteurs, representatives and working groups short papers describing in detail how HIV/AIDS issues pertained to their respective mandates and that it give a short briefing at the annual meeting of special rapporteurs on HIV/AIDS as a human rights issue with some recommendations concerning how these issues could be integrated into the work of those present at the meeting. To that end, the Chairperson invited UNAIDS to give a briefing.

45. Mr. O'Flaherty, consultant to the Joint United Nations Programme on HIV/AIDS (UNAIDS), addressed the critical links between human rights and the HIV/AIDS pandemic. He first emphasized the enormous scale of the problem, noting that there were 30 million people infected by HIV/AIDS, 42 per cent of them women and the majority of newly infected persons being under 25 years old. He gave an analysis of the specific forms of human rights abuses which heightened the risk of infection from HIV/AIDS: religious intolerance, which sometimes led to a failure to provide information on how to avoid infection; violation of the rights to receive and impart vital information on the virus; violation of physical integrity, including female genital mutilation and physical torture or corporal punishment; sale of children and forced prostitution. A range of human rights abuses were also directed against people living with HIV/AIDS, who were often discriminated against with respect to access to housing, health care and employment. Their freedoms of expression and association could be violated. Women infected with HIV/AIDS were sometimes perceived as "vectors of the disease" and subjected to punishment and harassment. Prisoners living with HIV/AIDS were frequently segregated from other inmates and subjected to violation of the confidentiality of their health status.

46. Mr. O'Flaherty also explored ways in which the special rapporteurs could address the issue of human rights and HIV/AIDS in their work. He acknowledged that in implementing their mandates the special rapporteurs had already drawn attention to this particular issue; nevertheless, the participants were urged to provide three types of assistance to UNAIDS:

(a) Systematic gathering of information on marginalized people suffering heightened vulnerability to HIV. In this regard, thematic mandates helped by understanding the full range of implications and could do much to identify and respond to local and regional patterns regarding HIV/AIDS-related human rights abuses;

(b) Intervene, as appropriate, with Governments. In order to advise States, they could follow the 12 guidelines adopted in September 1996 by the Second International Consultation on HIV/AIDS and Human Rights (see E/CN.4/1997/37) a summary of which the Commission on Human Rights annexed to its resolution 1997/33. The interventions with Governments could take various forms: helping States address the issue of marginalization; helping States to tackle practices which had an impact on the vulnerability to infection; helping States to tackle practices which had an impact on people living with HIV/AIDS; and urgent actions;

(c) Special rapporteurs were encouraged to include in their reports human rights violations relating to HIV/AIDS to the extent that such violations related to their mandates. The special rapporteurs were urged to establish contact with UNAIDS at its headquarters in Geneva or at the local level where UNAIDS country programme advisers could provide useful information.

VII. ADMINISTRATIVE QUESTIONS INCLUDING BUDGETARY ISSUES

47. Participants raised a number of practical concerns in connection with this item. A senior administrative officer of the Centre for Human Rights outlined the various constraints with regard to administrative, financial and personnel resources allocated to the Centre in the regular budget of the United Nations and provided some clarifications on issues raised by the participants.

48. Concerning the question of insurance, the participants were unanimous in claiming that they should be covered by medical and accident insurance while on official mission for the United Nations. They requested the Centre for Human Rights to provide them with an official text or document explaining United Nations policy in that domain, which was seen as being vague and inconsistent. Experts did not know whether they were covered by United Nations insurance while performing the functions relating to their mandate as requested by the Commission on Human Rights. They believed that they were entitled to rely upon the protection of the United Nations as appropriate to their status and that the Secretariat should explore every avenue to ensure that experts were covered by appropriate insurance policies.

49. It was explained to the participants that, according to United Nations rules, only staff members were covered by a medical insurance system. In certain circumstances and in a certain number of designated countries, coverage for malicious acts had been extended to certain individuals. A copy of the Malicious Acts Insurance policy which regulated the circumstances under which an expert could be covered and where, was circulated. The Secretariat was, nevertheless, prepared to undertake the necessary arrangements to contract a specific medical insurance for them on an annual basis or while on mission, provided that the experts paid for it. It was suggested that the costs of the insurance could be deducted from their Daily Subsistence Allowance (DSA).

50. With regard to financial resources, participants expressed the wish to obtain from the Secretariat a specific statement of the resources available for the carrying out of their respective mandates in order to enable them to

organize their work and plan their activities, including field missions, in the most effective way. The Secretariat provided a paper indicating the resources requested for each mandate, taking into consideration its requirements in terms of travel for missions/consultations and miscellaneous expenses.

51. The experts recalled that they were not remunerated but received, as a kind of compensation, an additional amount of 40 per cent of their DSA. It was explained that the DSA was an indemnity which the experts received while performing their duties with the United Nations to reimburse their expenses; it was not a remuneration of any kind and the additional 40 per cent corresponded to the amount received by all Assistant Secretaries-General and Under-Secretaries-General of the United Nations. The DSA was also exempt from taxes.

52. Several participants expressed their concern that some of the expenses they incurred within the framework of their mandates were not reimbursed or reimbursed only after a long delay. In that regard, they requested the Secretariat to provide them with clear instructions as to what kind of expenses were not reimbursed. It was explained that the expenses incurred by the participants while on mission were considered legitimate and were therefore reimbursed. Furthermore, every effort had been made to reimburse communication expenses (fax/phone). However, because of the scarcity of budgetary resources, other expenses should be kept to a minimum because there were simply no funds available to pay for them.

53. Several participants expressed their concern about the delay in receiving the full amount of their DSA. Given that in certain countries travellers cheques were not accepted or were subject to a large commission, one participant expressed the wish to receive cash or a bank cheque. It was explained that the procedure was to pay 80 per cent of the DSA in advance and the rest after the accomplishment of the mission. The delay in paying the remaining 20 per cent could be also related to the fact that not all the experts submitted their travel claims on time. In order to reduce costs and to minimize opportunities for fraud, most payments formerly made by cheque to experts would from now on be transferred electronically to the recipient's bank account. Several participants pointed out that transferring the remaining part of the DSA directly to their bank accounts without any explanation was not the most suitable solution because of a lack of transparency, and in any case that would not automatically resolve the delay problem.

54. On the issue of difficulties with regard to travel arrangements and flight schedules, several participants criticized the fact that they did not know how many missions they would be able to conduct during the year. In addition, the human resources to assist them in conducting their missions had been reduced to the minimum (one staff member per mission). This was particularly insufficient with respect to working groups. Participants asked whether they had the right to arrange their own itineraries or whether there was any kind of administrative restriction in that respect. One participant noted the need to improve the administrative assistance available to them at Headquarters.

55. Several participants expressed their concern with regard to the contractual status of the staff assisting the experts, which was very often insecure. The staff were often assigned on a temporary basis, which created discontinuity in the fulfilment of the mandates. Concern was also expressed with regard to the fact that staff members were very often assisting the experts on a part-time basis, because they were assigned to several mandates.

56. Finally, several participants noted that they were not entitled to a United Nations "laissez-passer", which was provided only to staff members, but they were entitled to a United Nations "certificate", which indicated merely that they were travelling on official United Nations business and were therefore entitled to facilities similar to those normally associated with a laissez-passer. Very often local authorities in the countries visited were not aware of this document. The fact that a visa could not be stamped on a certificate also created difficulties. It was therefore suggested that experts be provided with a laissez-passer in order to facilitate their travel. Another possibility could be granting the experts a "red" certificate, a colour which could more easily be assimilated to a diplomatic passport.

VIII. COOPERATION WITH THE SECRETARY-GENERAL, INCLUDING COORDINATION BETWEEN THE SPECIAL PROCEDURES SYSTEM AND THE SECURITY COUNCIL AND GENERAL ASSEMBLY, THROUGH THE SECRETARY-GENERAL

57. At the previous meeting the participants had requested the High Commissioner for Human Rights to keep the Secretary-General, and through him the General Assembly and the Security Council, apprised of the activities of the holders of mandates. In particular, whenever a decision was taken or a resolution adopted by the General Assembly or the Security Council concerning a given country, the relevant reports of special rapporteurs/representatives, experts and working groups should be taken into account, as well as any possible cooperation that might be deemed necessary. The participants wished to receive Security Council and General Assembly documents relevant to their respective mandates. In accordance with the recommendation of the third meeting, the participants were provided with an overview of the steps taken to implement the conclusions and recommendations outlined in each of their reports.

58. The participants at the third meeting had also recommended that the Chairperson of the meeting should meet annually with the Secretary-General. In the report of his activities, the Chairperson reported on his meeting with the Secretary-General pursuant to this recommendation.

IX. CONSIDERATION OF THE DRAFT MANUAL FOR SPECIAL RAPPORTEURS/REPRESENTATIVES, EXPERTS AND WORKING GROUPS OF THE COMMISSION ON HUMAN RIGHTS AND THE ADVISORY SERVICES PROGRAMME

59. It was recalled that a recommendation had been made at the second meeting to make available a constantly updated manual to new holders of mandates established by the Commission on Human Rights, to provide guidance on how the system of special procedures worked, what the experts' options for action were and how they should expect to relate to the Secretariat, including

the extent of servicing available to them, and to other parts of the United Nations system, both in the human rights sector and otherwise. Pursuant to this recommendation, the Secretariat had prepared a draft manual for the third meeting.

60. It had been proposed that an open-ended working group should meet prior to the fourth meeting to review the draft manual. A working group duly met on 22 May.

61. At the fourth meeting, there was consensus that there had been insufficient time to review the draft manual adequately and, therefore, the adoption of the manual should be postponed until the next meeting. That would allow for a more thoughtful review. It was proposed that the Secretariat prepare a consolidated text based upon the discussions in the working group which would be further reviewed in consultation with interested participants. The revised text would then be submitted to all the special rapporteurs at least six weeks in advance of the fifth meeting, which would have the draft manual before it for consideration and action.

X. OTHER MATTERS

62. In light of the fact that the five-year review of the World Conference on Human Rights would be held in June 1998, it was suggested that the special rapporteurs should submit a paper setting out their views on the progress in implementing the Vienna Declaration and Programme of Action. To that end, it was proposed that the Chairperson deliver a statement on behalf of his colleagues in New York. Another participant noted that next year was the celebration of the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights. One participant proposed that the next annual meeting should be moved to New York. This would have the merit of allowing the special rapporteurs to have direct contact with senior United Nations staff and direct contact with the liaison office of the High Commissioner/Centre for Human Rights.

XI. RECOMMENDATIONS

A. Coordination

63. With a view to improving coordination between the United Nations human rights mechanisms, the meeting made the following recommendations.

1. Coordination between the holders of special procedures mandates

64. The meeting urged the Activities and Programmes Branch to develop systems for effective coordination among various special rapporteurs/representatives, experts and working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, and between them and the field operations of the High Commissioner/Centre for Human Rights, in particular to facilitate a regular flow of information on their activities, to transmit information from one mandate to other relevant mandates, and to encourage joint activities (e.g. urgent actions, missions, etc.) so as to avoid duplication and overlap.

65. The meeting suggested that thematic rapporteurs and working groups should consult with the country-specific rapporteurs prior to undertaking or seeking a field mission.

2. Coordination between the holders of special procedures mandates and the High Commissioner for Human Rights regarding their in situ visits

66. The meeting noted that it had been informed that the function of focal point had been assumed by the head of the Activities and Programmes Branch. However, the meeting expressed regret that it was not informed of such a designation well in advance and therefore requested that the implementation should consist, with the assistance of the relevant staff, in facilitating effective discussions among the various mandates and between them, the High Commissioner for Human Rights and the treaty bodies, with a view to achieving the most appropriate approach to the human rights situations in the countries concerned.

3. Coordination between the special procedures system and the treaty bodies

67. The meeting agreed that modalities must be worked out by the Secretariat to improve cooperation between the special procedures system and the treaty bodies.

68. The meeting reiterated the recommendation of the third meeting that it be represented at the annual meetings of the persons chairing the human rights treaty bodies.

4. Cooperation with the Secretary-General

69. The meeting reiterated the recommendation of the third meeting that the Chairperson of the meeting should meet annually with the Secretary-General.

B. Independence and impartiality of the special procedures system

70. The fourth meeting of special rapporteurs and chairpersons of working groups recalled that:

(a) By resolution 8 (XXIII) of 16 March 1967, the Commission on Human Rights proposed to the Economic and Social Council that it study and investigate situations revealing a consistent pattern of violations of human rights;

(b) By resolution 1235 (XLII) of 6 June 1967, the Council endorsed the Commission's resolution, giving rise to what were now known as the special procedures;

(c) The Council's resolution was a response adopted in conformity with the Charter of the United Nations to address the legitimate concerns of the international community over serious, unpunished violations of human rights and the policy of apartheid in many parts of the world;

(d) The Commission and the Council established the special machinery to strengthen the protection and promotion of human rights, in particular by publishing reports and putting forward recommendations;

(e) The international community's legitimate concern had grown in recent years, and the United Nations had been repeatedly urged to take action to investigate, publicize and punish such human rights violations;

(f) The World Conference on Human Rights, held in Vienna in 1993, underlined the "importance of preserving and strengthening the system of special procedures ... to enable [the special rapporteurs] to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources," and that "the procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings." The Conference also asked all States "to cooperate fully with these procedures and mechanisms" (A/CONF.157/24 (Part I), sect. II, para. 95);

(g) The special procedures had allowed obstacles to be identified and problems affecting the full attainment and effective exercise of human rights throughout the world to be examined, in an effort to prevent violations of those rights from occurring or persisting. They had also enabled programmes of technical and advisory services to be recommended where appropriate;

(h) Additionally, those procedures, owing to the public nature of their reports, had increased general awareness of respect for human rights and had won wide recognition among champions of human rights, non-governmental organizations and individuals interested in the subject;

(i) The special rapporteurs and working groups were guided by, and tried to reflect in their working methods, the principles of neutrality, non-selectivity and objectivity.

71. Guided by the principles of neutrality, non-selectivity and objectivity, the meeting reaffirmed the following general principles and criteria:

(a) The special rapporteurs are independent experts. Their independence is reflected in both the form and the substance of their communications, their inquiries and their reports. It is a feature of the special rapporteurs' relations with all the parties concerned;

(b) The annexed terms of reference (appendix V) are the minimum necessary to ensure the independence, impartiality and safety of visits by the special rapporteurs to the field. These terms of reference do not exclude additional safeguards, depending on the mandates or circumstances;

(c) The special rapporteurs and working groups perform their tasks with strict impartiality and objectivity, the only guidelines or yardsticks for analysing the situations covered by their mandates being the Universal Declaration of Human Rights, the international human rights instruments to which the States concerned are party, and other extraconventional instruments adopted within the United Nations system. Their task is to weigh the facts that come to their attention and analyse them in the light of those

international instruments, and to make recommendations with a view to enabling all inhabitants of the countries under investigation to enjoy all the rights laid down in those instruments;

(d) The special rapporteurs also take special account of the resolutions passed every year on the thematic procedures by the Commission on Human Rights;

(e) The special rapporteurs' investigations are not judicial inquiries;

(f) The special rapporteurs are agents not of confidential but of public procedures. Their reports are public. Hence their relations with the press are governed by the basic principle of transparency;

(g) The special rapporteurs are organs of the Commission on Human Rights and as such benefit throughout their mandates and beyond, in respect of matters connected with their holding of mandates, from the privileges and immunities, inter alia from search, seizure, prosecution and arrest, enjoyed by the United Nations.

72. With respect to specific situations:

(a) The meeting expressed concern at the ongoing defamation suit filed in a Malaysian court against the Special Rapporteur on the independence of judges and lawyers. The meeting affirmed that the suit was a threat to the entire special procedures system, and decided to send a letter to the United Nations Secretary-General, with copy to the Chairman of the fifty-third session of the Commission on Human Rights (appendix VI);

(b) In connection with the decision taken by the Commission on Human Rights concerning the report of the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance, the meeting entrusted its Chairperson to send a letter to the Chairman of the fifty-third session of the Commission on Human Rights based on the following elements: (i) the meeting noted that despite decision 1997/125, the Commission adopted resolution 1997/73 on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance; (ii) the meeting would have preferred that the Special Rapporteur had been allowed the opportunity to express himself before the Commission on Human Rights during the discussion on this particular issue in order to give him the opportunity to emphasize the fact that the text referred to as offending the Holy Quran was in fact a quotation taken from a reply submitted by a Member State; (iii) the meeting hoped that the incident would not constitute a precedent.

C. Follow-up procedure

73. In view of the lack of follow-up to the recommendations contained in paragraph 70 of the report of the third meeting, the participants reiterated the following recommendations:

(a) The meeting suggested that a study be carried out on the conditions under which the High Commissioner for Human Rights could intervene with a given country to facilitate the follow-up of recommendations by the holders of human rights mandates;

(b) The meeting welcomed the proposal made by the special rapporteurs/representatives, experts and working groups to cooperate with the High Commissioner for Human Rights in the elaboration of a procedure to follow up its recommendations and decisions;

(c) The meeting requested the High Commissioner to convey suggestions concerning a follow-up procedure to the special rapporteurs/representatives, experts and working groups before their fifth meeting is convened;

(d) The meeting decided to study the High Commissioner's proposal at its next meeting;

(e) The meeting asked its Chairperson or a participant designated by him to seek an early meeting with the new High Commissioner to draw her attention to these and other recommendations aiming at the more effective coordination of the work of the Office of the United Nations High Commissioner for Human Rights and the mandates of participants;

(f) The meeting suggested that its Chairperson should introduce the report of the fourth meeting at the fifty-fourth session of the Commission on Human Rights and that he be available for a dialogue with Member States.

D. Administrative questions including budgetary issues

74. Under this item, the meeting decided the following:

(a) The Chairperson should receive the complaints and concerns of special rapporteurs/representatives, experts and chairmen of working groups of the special procedures and the advisory services programme of the Commission on Human Rights concerning administrative matters and these should be transmitted to the administration and all the competent authorities. The Chairperson was authorized to delegate this function to another member of the meeting;

(b) The Chairperson should present a report on his activities to the fifth meeting of special rapporteurs/representatives, experts and chairmen of working groups of the special procedures and the advisory services programme of the Commission on Human Rights;

(c) The Chairperson should transmit a letter to the administration of the United Nations requesting that consideration be given to issuing laissez-passers to special rapporteurs/representatives, experts and chairmen of working groups of the special procedures and the advisory services programme of the Commission on Human Rights when they undertake field missions.

E. Integrating HIV/AIDS

75. The meeting acknowledged the relevance of HIV/AIDS to the respective mandates and expressed its appreciation for the briefing given by a representative of UNAIDS.

F. Restructuring the Centre for Human Rights

76. The meeting urged that every effort be made to ensure that the limited human resources presently available to the holders of special procedures mandates should not be further diminished under the new structure.

77. The meeting shared the view of the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights that technical cooperation should continue to function as a separate entity and should not be merged or amalgamated with the special procedures owing to the different nature of the respective activities, which demanded different kinds of expertise, methodology and procedures. The meeting invited the High Commissioner to do everything possible to ensure that this recommendation was taken into account in the introduction and evaluation of the proposed new structure.

78. The meeting urged that the timing of the implementation of the new structure should not interfere with the preparation of reports of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and the advisory services programme of the Commission on Human Rights.

G. Next meeting

79. The meeting decided that the Chairperson and the Rapporteur should remain in office until the next meeting, to be held in Geneva from 25 to 28 May 1998. They should be entrusted with monitoring the follow-up to the recommendations, including their transmission to the High Commissioner for Human Rights.

Appendix I

MANDATES OF THE SPECIAL PROCEDURES OF THE COMMISSION ON HUMAN RIGHTS AND OF THE ADVISORY SERVICES PROGRAMME

I. THEMATIC MANDATES

A. Working groups

Title of mandate	Holder of mandate	End of current mandate
Working Group on Enforced or Involuntary Disappearances	Five independent expert members Chairman: Mr. I. Tosevski (the former Yugoslav Republic of Macedonia)	1998
Working Group on Arbitrary Detention	Five independent expert members Chairman: Mr. K. Sibal (India) Mr. L. Joinet (France)	2000

B. Special rapporteurs

Extrajudicial, summary or arbitrary executions	Mr. B.W. Ndiaye (Senegal)	1998
Independence of judges and lawyers	Mr. P. Cumaraswamy (Malaysia)	2000
Torture and other cruel, inhuman or degrading treatment or punishment	Mr. N. Rodley (United Kingdom)	1998
Religious intolerance	Mr. A. Amor (Tunisia)	1998
Use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	Mr. E. Bernales Ballesteros (Peru)	1998
Right to freedom of opinion and expression	Mr. A. Hussain (India)	1999
Contemporary forms of racism racial discrimination, xenophobia and related intolerance	Mr. M. Glèlè-Ahanhanzo (Benin)	1999

Sale of children, child prostitution and child pornography	Ms. O. Calcetas-Santos (Philippines)	1998
Elimination of violence against women	Ms. R. Coomaraswamy (Sri Lanka)	2000
Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights	Ms. F.Z. Ksentini (Algeria)	1998

C. Special representatives of the Secretary-General

Protection of children affected by armed conflict	Mr. O. Otunnu (Côte d'Ivoire)	2000
Internally displaced persons	Mr. F. Deng (Su[illegible])	1998

II. COUNTRY MANDATES

A. Special rapporteurs

Afghanistan	Mr. C.H. Paik (Republic of Korea)	1998
Cuba	Mr. C.J. Groth (Sweden)	1998
Equatorial Guinea	Mr. A. Artucio (Uruguay)	1998
Islamic Republic of Iran	Mr. M. Copithorne (Canada)	1998
Iraq	Mr. M. van der Stoel (Netherlands)	1998
Myanmar	Mr. R. Lallah (Mauritius)	1998
Palestinian territories occupied since 1967	Mr. H. Halinen (Finland)	Open-ended
Sudan	Mr. G. Bíro (Hungary)	1998
Territories of the former Yugoslavia	Mrs. E. Rehn (Finland)	1998
Zaire	Mr. R. Garretón (Chile)	1998

Rwanda	Mr. M. Moussalli (Switzerland)	1998
Burundi	Mr. P.S. Pinheiro (Brazil)	1998
Nigeria	Mr. U. Sorabjee (India)	1998

B. Special representatives of the Secretary-General

Cambodia	Mr. T. Hammarberg (Sweden)	1998

C. Independent experts

Haiti	Mr. A. Dieng (Senegal)	1998
Somalia	Ms. M. Rishmawi (Jordan)	1998

Appendix II

LIST OF PARTICIPANTS AT THE FOURTH MEETING

Mr. Abdelfattah Amor	Special Rapporteur on the elimination of all forms of religious intolerance and of discrimination based on religion or belief
Mr. Alejandro Artucio	Special Rapporteur on the situation of human rights in Equatorial Guinea
Mr. Enrique Bernales Ballesteros	Special Rapporteur on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination
Mr. Gáspár Bíro	Special Rapporteur on the situation of human rights in the Sudan
Ms. Ofelia Calcetas-Santos	Special Rapporteur on the sale of children, child prostitution and child pornography
Mr. Maurice Copithorne	Special Representative on the situation of human rights in Iran
Mr. Param Cumaraswamy	Special Rapporteur on the independence of judges and lawyers
Mr. Adama Dieng	Independent expert on the situation of human rights in Haiti
Mr. Roberto Garretón	Special Rapporteur on the situation of human rights in Zaire
Mr. Maurice Glèlè-Ahanhanzo	Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
Mr. Hannu Halinen	Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967
Mr. Abid Hussain	Special Rapporteur on freedom of opinion and expression
Mr. Louis Joinet	Chairman of the Working Group on Arbitrary Detention
Ms. Fatma Zohra Ksentini	Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Mr. Rajsmoor Lallah	Special Rapporteur on the situation of human rights in Myanmar
Mr. Bacre Waly Ndiaye	Special Rapporteur on extrajudicial, summary or arbitrary executions
Mr. Choong-Hyun Paik	Special Rapporteur on the situation of human rights in Afghanistan
Mr. Paulo Sergio Pinheiro	Special Rapporteur on the situation of human rights in Burundi
Ms. Mona Rishmawi	Independent expert on the situation of human rights in Somalia
Mr. Nigel S. Rodley	Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment

Appendix III

CHANGES OF PERSONNEL SINCE THE FIFTY-SECOND SESSION OF THE COMMISSION ON HUMAN RIGHTS

A. List of special rapporteurs/representatives, experts and chairmen of working groups of the special procedures and the advisory services programme of the Commission on Human Rights who stepped down following the fifty-second session of the Commission

Mr. Mohamed Charfi
Independent expert on the situation of human rights in Somalia

Mr. René Degni-Ségui
Special Rapporteur on the situation of human rights in Rwanda

Mr. Manfred Nowak
Expert in charge of the special process dealing with the problem of missing persons in the territory of the former Yugoslavia

Mrs. Mónica Pinto
Independent expert on the situation of human rights in Guatemala

B. List of special rapporteurs/representatives, experts and chairmen of working groups of the special procedures and the advisory services programme of the Commission on Human Rights appointed at the fifty-second session of the Commission

Mrs. Fatma Zohra Ksentini
Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Mrs. Mona Rishmawi
Independent expert on the situation of human rights in Somalia

Appendix IV

REPORT OF THE CHAIRMAN OF THE THIRD MEETING OF SPECIAL RAPPORTEURS/REPRESENTATIVES, EXPERTS AND WORKING GROUPS OF THE COMMISSION ON HUMAN RIGHTS

1. Since our election on 29 May 1996, Ms. Mónica Pinto, who to our great regret resigned this month, and myself have endeavoured to ensure the implementation of the decisions of the third meeting of independent experts.

2. The prospect of the fourth meeting scheduled for 21-23 May 1997 gives us the opportunity to describe our mandate. We have been responsible for:

- Ensuring the drafting, translation and distribution of the report;

- The distribution, for comments and adoption at our fourth meeting, of the manual for special rapporteurs of the Commission on Human Rights;

- Meeting and holding discussions with senior officials of the Secretariat and the Commission, in accordance with your wish;

- Participating in the meeting of our treaty-body colleagues;

- Keeping informed of administrative problems (restructuring, administration and finance) and political problems (draft resolutions) directly related to the performance of our functions;

- Preparations for our fourth meeting,

with a view to determining the procedures for cooperation.

I. REPORT OF THE THIRD MEETING

3. The report of the third meeting was drafted immediately after its closure by Ms. Pinto and approved by myself. After being distributed for comments, it was quickly translated and distributed thanks to the excellent cooperation which we received from Mr. José Luis Gómez del Prado and his team. No amendment has been received.

II. MEETING WITH THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS AND MEMBERS OF THE UNITED NATIONS SECRETARIAT

A. The Chairman of the Commission on Human Rights

4. A letter was sent to the Chairman of the Commission on Human Rights immediately after the meeting to inform him of the suggestions made by the rapporteurs concerning the Commission.

5. The report of the meeting was sent to him later.

6. An invitation to participate in the fourth meeting is to be addressed to the present Chairman of the Commission.

B. The Secretary-General of the United Nations

7. The Chairman of the Meeting was received on 20 November 1996 by Mr. Boutros Boutros-Ghali, Secretary-General of the United Nations, thereby inaugurating the annual meetings recommended by the third meeting, which the Secretary-General agreed to in principle.

8. He was informed, inter alia, of:

(a) Our decision to keep the bureau in office between meetings;

(b) Our desire to improve coordination and the exchange of information between experts, the Security Council, the General Assembly and the Secretariat (political affairs, peacekeeping operations and humanitarian affairs);

(c) Our decision on coordination between the United Nations High Commissioner for Human Rights (visits, field offices), good-offices missions, the Secretary-General and the independent experts of the Commission on Human Rights;

(d) Our concern at the steady decline in our human and material resources, a decline which the restructuring of the Centre for Human Rights does not seem primarily aimed at halting.

9. This meeting, which was very successful, was the subject of a follow-up letter, dated 16 December 1996, formally transmitting the report of the third meeting.

C. Under-Secretary-General for Peacekeeping Operations and Assistant Secretaries-General for Political Affairs

10. On 19 and 20 November 1996, the Chairman of the third meeting was received by Mr. Kofi Annan, Under-Secretary-General for Peacekeeping Operations, and Mr. Lansana Kouyaté (Africa, Asia) and Mr. Alvaro de Soto (Europe and Latin America), Assistant Secretaries-General for Political Affairs.

11. At these meetings it became apparent that there was no system for transmitting information between the departments of these senior officials and the independent experts; such coordination is, however, essential for an effective system for prevention of human rights violations, and for following up the recommendations of the independent experts. This coordination is supposed to be ensured by the High Commissioner for Human Rights and, in particular, by his liaison office in New York, whose assistance was appreciated. However, the reports of our meeting, for example, were not available in the New York office.

12. The integration of information-technology systems between Geneva and New York is not perfect since it was impossible for the report to be transmitted electronically.

13. Other points were also taken up, including:

(a) The need for consultation, in particular between the rapporteurs with geographical competence, and the Departments of Political Affairs and Peacekeeping Operations. In this context, the liaison office of the Centre for Human Rights in New York should immediately initiate the necessary contacts with these Departments;

(b) The human rights element in the drafting of reports on the field operations of the Assistant Secretaries-General for Political Affairs;

(c) The human rights element in the training of military personnel participating in peacekeeping operations.

III. MEETING OF TREATY BODIES AND COOPERATION WITH OTHER UNITED NATIONS BODIES

14. The Chairman of the third meeting represented the Commission's independent experts at the 1996 annual Meeting of Chairpersons of United Nations treaty bodies, held in Geneva under the chairmanship of the Chairperson of the Committee on the Elimination of Discrimination against Women. This provided an opportunity for discussing joint concerns and, in particular, the exchange of information and documents, collaboration between certain committees and certain experts whose mandates overlapped (torture, rights of children, violence against women, etc.), the restructuring of the Centre and the role of the United Nations High Commissioner for Human Rights.

15. The Chairman of the Committee on Economic, Social and Cultural Rights expressed a desire to participate in the fourth meeting. The bureau of the third meeting recommended that one agenda item should be devoted to the hearing and discussion of proposals submitted, as was done in 1996 for UNIFEM, and of the suggestions for the fourth meeting made by UNAIDS (or ONUSIDA), whose request was favourably received.

IV. MEETING WITH THE UNITED NATIONS COMMISSIONER FOR HUMAN RIGHTS

16. Our meeting instructed the bureau immediately to meet the United Nations Commissioner for Human Rights and to inform him of our resolutions and discuss with him the implementation of those which concerned him. This meeting took place in the presence of Mr. Mautner-Markhof and Mr. Gómez del Prado.

17. Mr. Ayala Lasso, the High Commissioner, welcomed our recommendations and immediately designated Mr. Mautner-Markhof as coordinator for the missions of the Commission's rapporteurs and the advisory services of the Centre for Human Rights.

18. He offered his good offices for the purposes of the implementation of our recommendations concerning other United Nations bodies.

19. On the question of restructuring, he promised to keep us informed of developments but made no commitment concerning the consultation of rapporteurs.

20. Since the end of May 1996, the Chairman of the meeting has met the High Commissioner on two occasions, and in April 1997 had a meeting with Mr. Zacklin, the Officer-in-Charge. He also met the Assistant Secretary-General for Human Rights.

21. Although three information circulars on the restructuring have been issued, regrettably the fact remains that consultation with the users of this Centre, and primarily the special rapporteurs, has not been accepted.

22. A special report on the progress of the restructuring and its repercussion for the independent experts should be issued at the beginning of the fourth meeting.

23. The Chairman does not know whether the consultation on travel has been successful since this requires that all partners should furnish the information they need to share in time and that this information actually be distributed.

24. A report on experience acquired in this area will therefore have to be submitted at the fourth meeting.

25. On the question of the study requested from the High Commissioner on coordination between, on the one hand, the independent experts, the Security Council and the General Assembly, and on the other, the High Commissioner's field offices, with a view to the prevention of human rights violations, the exchange of information and the follow-up of recommendations, no information is available on the current situation, despite the insistence of the Chairman of the meeting. It is therefore to be feared that nothing significant has been done in this area.

26. In addition, the independent experts had offered to participate in the study but, to our knowledge, none of them has been approached for this purpose. However, this study is essential if a coherent United Nations human rights policy is to be formulated and implemented. The Chairman hopes that the Officer-in-Charge, High Commissioner/Centre for Human Rights, will provide clarification on this matter at the fourth meeting.

V. OTHER ADMINISTRATIVE AND POLITICAL QUESTIONS

27. Concerning the manual for special rapporteurs, the text was drafted and distributed for comment more than eight months ago. The document has been well prepared and a meeting is scheduled for 20 May, with the participation of all who wish to attend, to approve the final document and propose its adoption by the fourth meeting. The special procedures branch is to be congratulated on this work and thanks are expressed to all colleagues who participated in it.

28. As to the integrity, coherence and independence of the non-treaty machinery of the United Nations Commission on Human Rights, proceedings have been initiated against one of our colleagues, despite the opinion of the United Nations Office of Legal Affairs that he had acted in the exercise of his functions as Special Rapporteur and was therefore covered by the immunity accorded to United Nations bodies.

29. One Government has established as a precondition for a visit by a joint mission of thematic special rapporteurs that they should negotiate the mission's terms of reference with it, including those considered as minimum terms contained in the annex to the manual for special rapporteurs. Other Governments have rejected the possibility of a joint mission or made acceptance of a visit conditional upon the "success" of a visit by another rapporteur.

30. A lack of clarity continues to characterize the account taken by the United Nations High Commissioner for Human Rights of the role and reports of the independent experts in the performance of his functions, and in particular his visits and the negotiations on the terms of reference and functions of his operations in the field.

31. In a draft resolution distributed at the most recent session of the Commission on Human Rights, there is no attempt to conceal the intention of silencing the public procedures followed by the independent experts and greatly increasing the restrictions on their independence, on the pretext of rationalization.

32. On the question of the debate held at the fifty-third session on the responsibility of a rapporteur for the content of his report, it must be said that countries facing unprecedented crises are nevertheless trying to terminate or substantially modify the mandates of the rapporteurs or experts appointed to cover these situations.

33. These few examples show that there is a long way to go in the area of universality and impartiality in the field of human rights. The "spirit of Vienna" has faded and is in danger of becoming a mirage. There are many sources of frustration, as is apparent from the frequent resignations. The lack of human and material resources is endemic, to the point where one wonders whether it is not orchestrated. In any event, over and above whatever may be said, this lack of resources reflects more faithfully the state of mind of what is commonly known as the "international community" concerning universal respect for human rights.

34. Our fourth meeting will, therefore, not fail to address these questions submitted for your consideration.

VI. ADMINISTRATION AND FINANCE

35. The dialogue initiated, under the aegis of the Assistant Secretary-General for Human Rights, with the chiefs of the Division of Administration, the Conference Services Division and the Financial Resources Management Service was unanimously appreciated.

36. In practice, the time limit for the submission of reports was not extended and, although they were translated, their distribution was lamentable, in that an old rule was resurrected to enforce simultaneous distribution in the six official languages of the United Nations. Thus,

reports were not made available to participants in the most recent (fifty-third) session of the Commission until the day before their presentation, which in effect rendered their use by Governments and NGOs impossible.

37. In addition, payment of the rapporteurs' per diems and the sending of plane tickets continue to be beset with numerous delays and administrative problems. Some progress seems to have been made on the question of the insurance of independent experts.

38. These questions and the discussion on remuneration will have to be taken up at the fourth meeting, and solutions which take account of our status as non-remunerated volunteers will have to be found.

39. The draft annotated agenda, which took account of the points raised above and those mentioned in the report of the third meeting, was the subject of a meeting between the Chairman and the chief and another official responsible for special procedures. The Chairman hopes that this draft, together with the documents, will be available at least 15 days before the meeting.

40. In addition, all participants, including invited participants (Chairman of the Commission, representatives of the treaty bodies, Chairman of the Committee on Economic, Social and Cultural Rights, representatives of UNAIDS) and the concerned officials of the High Commissioner/Centre for Human Rights should be notified in time.

41. In conclusion, the Chairperson wishes once again to thank his colleagues for their confidence and the secretariat for its cooperation, and extends his collaboration to the person who is to succeed him.

Appendix V

TERMS OF REFERENCE FOR FACT-FINDING MISSIONS BY SPECIAL RAPPORTEURS/REPRESENTATIVES OF THE COMMISSION ON HUMAN RIGHTS

During fact-finding missions, special rapporteurs or representatives of the Commission on Human Rights, as well as United Nations staff accompanying them, should be given the following guarantees and facilities by the Government that invited them to visit its country:

(a) Freedom of movement in the whole country, including facilitation of transport, in particular to restricted areas;

(b) Freedom of inquiry, in particular as regards:

(i) Access to all prisons, detention centres and places of interrogation;

(ii) Contacts with central and local authorities of all branches of government;

(iii) Contacts with representatives of non-governmental organizations, other private institutions and the media;

(iv) Confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty, considered necessary to fulfil the mandate of the special rapporteur; and

(v) Full access to all documentary material relevant to the mandate;

(c) Assurance by the Government that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings;

(d) Appropriate security arrangements without, however, restricting the freedom of movement and inquiry referred to above;

(e) Extension of the same guarantees and facilities mentioned above to the appropriate United Nations staff who will assist the special rapporteur/representative before, during and after the visit.

Appendix VI

LETTER FROM THE CHAIRPERSON OF THE FOURTH MEETING
ADDRESSED TO THE SECRETARY-GENERAL

Geneva, 30 May 1997

Your Excellency,

The special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and the advisory services programme of the United Nations Commission on Human Rights, meeting in Geneva from 21 to 23 May 1997, are alarmed by the litigation pursued against Mr. Param Cumaraswamy, United Nations Special Rapporteur on the independence of judges and lawyers. Our understanding is that a civil action has commenced against the Special Rapporteur in the Kuala Lumpur High Court by two public corporations. The alleged defamation refers to an article that appeared in a London-based legal magazine in which Mr. Cumaraswamy was interviewed in his capacity as the United Nations Special Rapporteur on the independence of judges and lawyers.

As experts performing missions for the United Nations, we are immune from legal process under the 1946 Convention on the Privileges and Immunities of the United Nations, to which Malaysia is a party. This immunity is accorded "in respect of words spoken or written and acts done in the course of the performance of their mission...." Our immunity has been confirmed by the International Court of Justice (ICJ), inter alia in the 1989 Mazilu case. In that case, the ICJ also determined that experts enjoy such privileges and immunities throughout their mandate, whether they are travelling or not.

We greatly appreciate the prompt action taken by Your Excellency in issuing a certificate asserting Mr. Cumaraswamy's immunity. We also understand that the Malaysian Government has issued a certificate. We are concerned that this latter certificate was drafted in terms which would appear to leave jurisdiction to the Court to determine whether Mr. Cumaraswamy was or was not acting within his mandate; a fact which it was for the Secretary-General to determine. We are concerned in this regard that several court sessions have already been held to hear the case. The mere holding of such court sessions and the fact that the Special Rapporteur, or his legal representative, has to appear before and defend himself in court in itself undermines the immunity granted to us under international law.

The United Nations experts view such a situation with great concern. Undermining the immunity accorded to one expert constitutes an attack on the entire system and institution of United Nations human rights special procedures and mechanisms.

All differences arising out of the interpretation or application of the Convention should be referred to the International Court of Justice, as is specified by the 1946 Convention on the Privileges and Immunities of the United Nations. They are not to be decided by national courts with the possibility of varying rulings, interpretations and jurisprudence. In light

of the present circumstances, we are of the view that differences of interpretation on the application of the Convention have already risen.

We therefore respectfully request Your Excellency to immediately invoke the procedures outlined in section 30 of the 1946 Convention on the Privileges and Immunities of the United Nations for a request to be made to seek an Advisory Opinion from the International Court of Justice. The Convention states that the opinion of the Court must be accepted as decisive by the parties.

Please accept the assurances of our highest consideration.

(Signed) Paulo Sergio Pinheiro
Chairman
Fourth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures and the advisory services programme of the United Nations Commission on Human Rights

cc: H.E. Mr. Miroslav Somol
Chairman, fifty-third session
of the Commission on Human Rights

H.E. Mr. Siraj Haron
Permanent Representative of Malaysia to
the United Nations Office at Geneva